

SALGA takes issue with draft regulations

ON SENIOR MANAGERS' APPOINTMENT AND CONDITIONS OF SERVICE

The Department of Co-operative Governance (DCoG) is developing regulations in terms of the amended Municipal Systems Act. These give further effect to the Local Government Turnaround Strategy which recommended the professionalisation of local government by, among other things, appointing qualified and skilled personnel.

The Act envisages regulations to provide for the competency requirements, appointment, duties, remuneration, benefits and other terms and conditions of employment of municipal managers and managers directly accountable to them.

In May 2012, SALGA, as a key stakeholder, commented on version 18 of the draft regulations to the National Assembly's Portfolio Committee on Co-operative Governance and Traditional Affairs. SALGA's comments centre on four areas of concern, namely, permanent section 56 managers, overregulation, the remuneration framework and the regulation of SALGA.

Permanent section 56 managers

Regulation 47 of the draft states that, after the lapse or termination of the current arrangement, all managers who

report to the municipal manager must be appointed in a permanent capacity. SALGA took issue with this provision, arguing that it attempts to amend the Systems Amendment Act and is constitutionally impermissible.

Section 57(7) of the Municipal Systems Act was removed by the Municipal Systems Amendment Act. This provision empowered the municipality to extend the fixed-term regime to section 56 managers and its deletion aimed at ensuring that these managers are instead appointed permanently. SALGA is of the view that municipalities nonetheless still have the discretion to appoint section 56 managers on fixed-term contracts. DCoG, on the other hand, insists that the new legal regime compels municipalities to appoint them on a permanent basis, and thus follows through on that in its draft regulations.

Although SALGA acknowledges that the deletion of section 57(7) of the principal Act has created something of an impasse in the interpretation of the Act with regard to the employment of section 56 managers, they argued that this cannot be solved by a transitional arrangement in secondary legislation. The Constitution is clear that local government matters not specifically addressed in the Constitution can only be regulated in terms of national legislation. Unless the Systems Act is amended to explicitly compel municipalities to appoint section 56 managers on permanent contracts, the default position remains that municipal councils have discretion to make permanent or fixed-term appointments. (See *LGB* 13(4) pages 10–11.)



Minister Richard Baloyi

Photo: CoGTA/Coppermine Photo Gallery



Councillor Joshua Nkonyama

Photo: CoGTA/Coppermine Photo Gallery

Overregulation

SALGA's second key concern is about the existence of parallel sets of regulations containing competency requirements for senior managers in local government. One set is issued by DCoG in terms of the Systems Act, and another by National Treasury in terms of the Municipal Finance Management Act (MFMA).

SALGA argued that this amounts to duplication as both regulate the same issue. The Treasury's regulations deal with more than just financial competencies and therefore, from 1 January 2013, two sets of secondary legislation from different departments will be regulating the competency requirements of senior managers in local government.

SALGA argued that, at best, this is gross overregulation and further, it more than likely encroaches on the institutional integrity of local government and is thus unconstitutional. They proposed, as we have done elsewhere (see *LGB 13(1)* page 16), that a single, comprehensive and coherent competency framework be developed for the local government sphere, which encompasses all competency requirements for senior managers.

Remuneration framework

Regulation 36 provides that the upper limit of the total remuneration package of senior managers for a financial year must be determined by the Minister of CoGTA before March of the coming financial year, after consultation with the Minister for Public Service and Administration, the MECs, and organised local government. The Minister must take into consideration:

- (a) the classification of municipalities according to grades;
- (b) the respective role, status, duties, functions and responsibilities of the municipality;

- (c) the different categories or types of municipalities, having regard to their respective powers, duties and functions;
- (d) the gross income, the area of jurisdiction and the nature of settlement of each municipality;
- (e) the affordability of different levels of remuneration of municipal staff;
- (f) the current principles and levels of remuneration in society in general;
- (g) the need for the promotion of equality and uniformity of salaries, allowances and benefits for equal work performed;
- (h) the provision of uniform norms and standards nationally to address disparities; and
- (i) inflationary increases.

In this regard, SALGA argued that it is legally questionable for the Minister to unilaterally determine the remuneration of local government managers ahead of the introduction of the single public service, particularly when no scientific basis for the framework exists and when it appears to be guided by vague and irrelevant criteria.

If this is a response to the public's anger about managers' remuneration, SALGA contended that this anger relates to managers' perceived lack of competence and not their remuneration per se. If the competency framework results in highly qualified and competent senior managers, then remuneration is unlikely to remain an issue.

In the light of the re-emergence of the discussion about a single public service, the insistence on the limitation of salaries for senior managers in local government could be construed as an attempt to introduce and pre-empt certain elements of the single public service 'through the back door', without proper consultation with organised local government.

Regulation of SALGA

Regulation 41 provides that organised local government must establish procedures that will apply to consultations with the Minister of CoGTA and the Financial and Fiscal Commission (FFC) as contemplated in the new section 71 of the Act.

Section 71 provides that organised local government must, before embarking on any negotiations with parties in the bargaining council established for municipalities, consult the FFC, the Minister and any other parties as may be prescribed. This consultation must take place at least 30 days prior to parties in the bargaining council exchanging proposals.

On expiry of this period, the Minister and the FFC shall be deemed to have been consulted.

SALGA objected to these provisions on the ground that they are unconstitutional because they attempt to regulate organised local government in terms of how the collective bargaining process should be approached. They argued that the Systems Act does not allow the Minister to regulate the functioning of SALGA. In addition, Regulation 41 is out of place in regulations applicable to senior managers. The salary structure and conditions of service of senior managers do not form part of the bargaining process in the South African Local Government Bargaining Council.

Comments

Although the committee seemed to think that Bills and regulations should, in future, be attended to simultaneously to avoid these kinds of delays, it is normal for regulations to come into force after the



principal Act. What is important is that CoGTA should stay within the bounds of the Act in developing the regulations. The Act empowers the Minister to prescribe certain matters but he may not use that power to go beyond the Act.

Also of importance is that SALGA, the South African Municipal Workers' Union (SAMWU) and CoGTA, as important stakeholders in matters relating to local

government, should find common ground and finalise the regulations urgently, as appointments are already being made that are not in line with the intentions of the regulations. The Western Cape High Court has, for example, recently overturned the appointment of the municipal manager in Oudtshoorn Local Municipality on the grounds that the appointed candidate did not have the competency requirements prescribed for the post of municipal manager

(see page 18). As such, his appointment was in contravention of section 54A of the amended Systems Act and therefore null and void.

We urge CoGTA and provincial departments responsible for local government to implement the Systems Act by vigorously monitoring senior management appointments.

See also de Visser, J (2011) 'Implementing the Municipal Systems Amendment Act', *LGB* 13(4): 10–11, and de Visser, J and Ntliziywana, P (2011) 'Professional administration crucial for service delivery', *LGB* 13(1): 16, available for downloading from our website at <http://www.ldphs.org.za/local-government-bulletin>



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